

AUG - 3 2009

**Clerk, U.S. District and
Bankruptcy Courts**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FERNANDO LINARES BELTRANENA
4th Avenida 11-23, zona 10
Guatamala 01010

Case: 1:09-cv-01457
Assigned To : Friedman, Paul L.
Assign. Date : 8/3/2009
Description: FOIA/Privacy Act

VS.

CASE NO. _____

**HILLARY RODHAM CLINTON, in her official capacity
as the Secretary of State for the United States of America**
2201 C Street NW
Washington, DC 20520

DEFENDANT

COMPLAINT

Comes Now the Plaintiff Fernando Linares Beltranena, by and through his attorneys of record, and for his Complaint against the Defendant Hillary Rodham Clinton, in her official capacity as the Secretary of State for the United States of America, states and alleges as follows:

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for declaratory and injunctive relief to compel the disclosure and release of agency records improperly withheld by the Defendant from the Plaintiff.
2. Plaintiff Fernando Linares Beltranena ("Beltranena") is an individual and a citizen and resident of Guatemala.
3. Defendant Hillary Rodham Clinton ("Defendant") is the Secretary of State for the United States of America.
4. The Court has personal jurisdiction over the Defendant pursuant to 5 U.S.C. § 552(a)(4)(B) and venue is proper herein pursuant to 5 U.S.C. § 552(a)(4)(B).
5. The Court has jurisdiction over the subject matter of the claims set forth in this Complaint pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1346.

6. On or about May 8, 2007, the Defendant's Consul General in Guatemala notified Beltranena by letter that his Non-Immigrant visa application of November 13, 2006 was refused, citing Beltranena's alleged permanent ineligibility for a U.S. visa under section 212(a)(C)(ii) of the Immigration and Naturalization Act. See attached Exhibit 1.

7. On or about September 12, 2007, Beltranena submitted a request to the Defendant under the FOIA for all evidence related to the refusal of his visa application. See attached Exhibit 2.

8. On or about April 2, 2008, Defendant notified Beltranena by letter that Defendant had, pursuant to Beltranena's FOIA request, initiated searches of certain Department of State record systems: the Central Foreign Policy Records, the Office of Visa Services of the Bureau of Consular Affairs and the American Embassy in Guatemala. See attached Exhibit 3.

9. According to the Defendant's letter of April 2, 2008, only the search of the Defendant's Central Foreign Policy Records had been completed as of that date and that search only yielded three documents responsive to Beltranena's FOIA request. Exh. 3. All three documents were withheld by the Defendant, citing exemptions 5 U.S.C. § 552(b)(1) and (b)(3), but no further description or identification of the documents was provided. Id. The Defendant impermissibly failed to specify the underlying statute(s) upon which the Defendant claims the 5 U.S.C. § 552(b)(3) exemption.

10. On or about April 11, 2008, Beltranena timely appealed to the Defendant's Appeals Review Panel ("Panel") the Defendant's decision to withhold the three responsive documents. See attached Exhibit 4.

11. Under 5 U.S.C. § 552(a)(6), the Panel was to render a decision as to Beltranena's appeal within 20 days, excluding Saturdays, Sundays and legal public holidays, of receipt of the appeal. The Panel did not and has not timely ruled on the appeal.

12. On or about March 17, 2009, Beltranena inquired about the status of his appeal and on or about April 13, 2009, the Defendant notified Beltranena by letter that no action had yet been taken regarding the appeal and that it is impossible to predict when such action would be taken. See attached Exhibit 5. The Defendant also acknowledged that Beltranena had long since exhausted his administrative remedies and that he may seek judicial review. Id.

13. The Defendant has (i) improperly withheld the three responsive documents found in its search of the Central Foreign Policy Records; (ii) impermissibly failed to provide Beltranena with the specific underlying statute(s) upon which the Defendant claims the 5 U.S.C. § 552(b)(3) exemption from disclosure; and (iii) failed to notify Beltranena of the results of the Defendant's searches of the Office of Visa Services of the Bureau of Consular Affairs and the American Embassy in Guatemala regarding any documents responsive to Beltranena's September 12, 2007 FOIA request.

WHEREFORE, Plaintiff Fernando Linares Beltranena prays that judgment be entered in his favor and award him the following relief:

(a) order the Defendant to promptly complete its searches of the records of the Office of Visa Services of the Bureau of Consular Affairs and the American Embassy in Guatemala regarding any documents responsive to Beltranena's September 12, 2007 FOIA request and to immediately thereafter notify Beltranena of the results of such searches;

(b) require the Defendant to promptly furnish all responsive documents, or any portion thereof, that are being improperly withheld from Beltranena under 5 U.S.C. § 552, and in the alternative, to furnish all such responsive documents to the Court for review and subsequent production to the Plaintiff;

(c) compel the Defendant to provide Beltranena with the specific underlying statute(s) upon which the Defendant claims the 5 U.S.C. § 552(b)(3) exemption from disclosure;

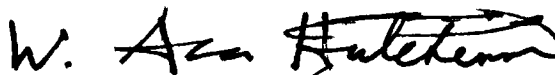
(d) award Beltranena all of his costs and reasonable attorneys' fees incurred in this action as provided by 5 U.S.C. § 552(a)(4)(E); and

(e) grant Beltranena any and all other relief to which he may be entitled.

Dated this 3 day of August, 2009.

Respectfully submitted,

FERNANDO LINARES BELTRANENA



W. Asa Hutchinson

D.C. Bar No. 978732

THE ASA HUTCHINSON LAW GROUP, PLC

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Motion to Appear *Pro Hac Vice* Pending



Embassy of the United States of America

Guatemala, Guatemala
May 8, 2007

Mr. Fernando Linares Beltranena
4 Avenida 11-23 Zona 10
Guatemala.

Dear Mr. Linares Beltranena:

In relation to your Non-Immigrant visa application of November 13, 2006, I wish to apologize for the delay in making a final determination in this case.

After a careful review of all the information available to me, I regret to inform you that you continue to be permanently ineligible for a US visa under the provisions of sections 212(a)(C)(ii) of the Immigration and Naturalization Act.

Therefore, it is also necessary to refuse your current visa application under these grounds of ineligibility.

I regret that it is not possible to provide a more positive answer, and I also regret that I cannot provide detailed information about the grounds of this ineligibility.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Lowell".

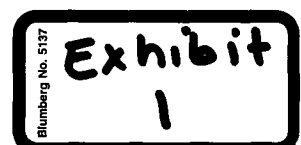
John A. Lowell
Consul General

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fernando linares beltran
abogado & notario, m.a. en economia, ucla
8ª. calle 4-61, zona 10, guatemala 01010
pbx: (502) 2385-1214 ~ fax: (502) 2385-1228
flinares@ufm.edu.gt

Freedom of information Act Request

FOIA/PA
U.S. DEPARTMENT OF STATE
WASHINGTON, DC 20522-6001

Guatemala, September 12, 2007

Dear U.S Department of State:

Please give me the reason, and the evidence, for my US visa revocation and denial of a new visa request, as annexed. I enclose Form DOJ-361, and also declare, under penalty of perjury, that the foregoing is true and correct. Executed on July 16, 2007.

Please answer to my above address, or Please send me a
FAX to: Fernando Linares
011(502) 2385-1228, or
E-mail to: flinares@ufm.edu.gt

Cordially,



Fernando Linares Beltranena

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U.S. Department of Justice

Certification of ntity



Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Failure to furnish this information will result in no action being taken on the request. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(f)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to Director, Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice, Washington, DC 20530 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester ¹

Fernando Linares Beltranena

Citizenship Status ²

Guatemalan

Social Security Number ³

none

Current Address

Calle 4-61 zona 10 Guatemala City, Guatemala 01010

Date of Birth

14 Feb. 48

Place of Birth

Wash. D. C.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(f)(3) by a fine of not more than \$5,000.

Signature ⁴

Fernando Linares Beltranena

Date

July 17, '07

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(h), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Print or Type Name

¹ Name of individual who is the subject of the record sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.



United States Department of State

Washington, D.C. 20520

Case No.: 200705478
ER01, ER02 Segments

APR 02 2008

Fernando Linares Beltranena, Esquire
8a Calle 4-61, Zona 10
Guatemala 01010

Dear Mr. Beltranena:

In response to your request dated September 12, 2007 under the Freedom of Information Act (Title 5 USC Section 552), we have initiated searches of the following Department of State record systems: the Central Foreign Policy Records (the principal record system of the Department of State), the Office of Visa Services of the Bureau of Consular Affairs, and the American Embassy in Guatemala.

The search of the Central Foreign Policy Records has been completed, and has resulted in the retrieval of three documents responsive to your request. After reviewing these documents, we have determined that all three must be withheld in full.

An enclosure provides information on Freedom of Information Act exemptions and other grounds for withholding material. Of the documents withheld in full, two were withheld under exemption (b)(1); and all three under exemption (b)(3), INA.

In some cases, two or more exemptions may apply to the same document. 09 1457

With respect to material withheld by the Department of State, you have the right to appeal our determination within 60 days. A copy of the appeals procedures is enclosed.

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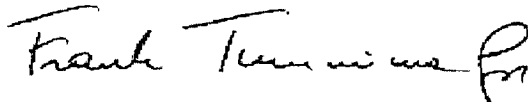
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Blumberg No. 5137
Exhibit
3

- 2 -

We will keep you informed as your case progresses. If you have any questions, you may write to the Office of Information Programs and Services, SA-2, Department of State, Washington, DC 20522-8100, or telephone us at (202) 261-8484. Please be sure to refer to the case number shown above in all correspondence about this case.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank T. ... for".

Margaret P. Grafeld, Director
Office of Information Programs and Services

Enclosures:
As stated.

fernando linares beltranena
abogado & notario, m.a. en economia, ucla
8a. calle 4-61, zona 10, guatemala 01010
pbx: [502] 2385-1214 ~ fax: [502] 2385-1228
flinares@ufm.edu.gt

U.S. DEPARTMENT OF STATE SA-2
APPEALS REVIEW PANEL, C/O APPEALS OFFICER
A/RPS/IPS/PP/LC
ROOM 8100, WASHINGTON, DC 20522-8100
U.S.A.

Guatemala, April 11, 2008

Case number. 200705478

Dear Department of State:

I enclose the denial to my FOIA request.

I appeal my right to review the three documents cited, and any other documents pertaining to the reason why my US visa was revoked, and subsequently denied, because I need the information to prove my innocence in the allegations for visa denial. How else can I defend myself if I do not know the charge (not the statute related to it) and have not seen the evidence?

I allege that I have never been involved in narcotics wrongdoing, or in any knowing conspiracy.

I further assert that the information I am requesting and that falsely accuses me, was presented to the consular authorities in bad faith, and is libellous.

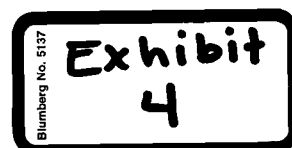
I can prove this last assertion if I am shown these documents and so request it on the basis of my Constitutional right to fairness and to not be considered guilty of ineligibility to a visa without being shown the reasons for the accusation.

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fernando linares beltranena

abogado & notario, m.a. en economia, ucia

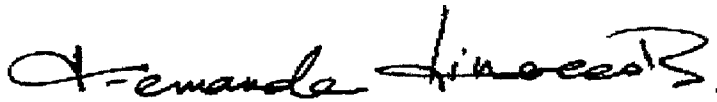
8a. calle 4-61, zona 10, guatemala 01010

pbx: [502] 2385-1214 ~ fax: [502] 2385-1228

flinares@ufm.edu.gt

In general, I believe that it would be in the interest of the U.S. Government to explain the reasons for the visa denial to the requester, as a deterrent of his future conduct. If not, what good does it do to punish if the reason is not known? I do not think that the U.S. government is privately vengeful but wishes to set a precedent useful to all.

Cordially,



Fernando Linares Beltranena

8a. calle 4-61, zona 10

Guatemala, 01010, Guatemala

Telephone: 011(502)2385-1214

Fax: 011(502)2385-1228

E-mail: flinares@ufm.edu.gt



United States Department of State

Washington, D.C. 20520

April 13, 2009

Fernando Linares Beltranena
Abogado & Notario
4a Avenida 11-23, Zona 10
Guatemala 01010

Dear Mr. Beltranena:

Thank you for your letter of March 17, 2009, inquiring about the status of your appeal in case number 200705478. It is not possible to predict when action on your appeal will be completed; however, the office processing the review in your appeal has been notified of your status inquiry. The Department of State has a large number of Freedom of Information Act and Privacy Act requests pending. Your appeal should be reviewed in the near future. We hope to have a response soon, and you may also continue to inquire about the status of your appeal.

Federal regulations provide that a requester shall be deemed to have exhausted his/her administrative remedies if an agency fails to respond to an appeal within the twenty-day time period, and the requester may then immediately seek judicial review. Thus, since the twenty-day period has elapsed, you are free to seek judicial review should you wish to do so.

Sincerely,

A handwritten signature in cursive script that reads "E. Ray McLaughlin".

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E. Ray McLaughlin
Office of Information Programs and Services

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